

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:) Docket HWCA 01/02-3011
)
Badjr Transportation, Inc.)
10575 Banana Avenue)
Fontana, California 92337) ENFORCEMENT ORDER
)
EPA ID # CAR000094664;)
) Health and Safety Code
and) Section 25187
)
Bernard A. DeKay)
)
)
Respondent)
_____)

INTRODUCTION

1.1. Introduction. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Badjr Transportation, Inc. (Badjr) and Bernard A. DeKay (DeKay) (herein known as Respondents).

1.2. Sites. Respondents transported hazardous waste and held hazardous waste at transfer facilities at the following sites: 10756 Calabash Avenue, Fontana (Calabash Site) and 10575 Banana Avenue, Fontana, California (Banana Site).

1.3.1. Parties. The Department is the state agency with responsibility and jurisdiction to enforce the Hazardous Waste Control Law (HWCL) and the implementing regulations in California Code of Regulations, title 22, sections 66260 et seq.



1
2 1.3.2. Badjr is a California corporation. Badjr is a
3 "person" as defined in Health and Safety Code section 25118.
4 Badjr is a hazardous waste transporter, as those terms are
5 defined in California Code of Regulations, title, 22, section
6 66260.10. At the time the violations cited in this order
7 occurred, Badjr did not hold a valid hazardous waste transporter
8 registration with the State of California.
9

10 1.3.3. DeKay is an individual and the President of
11 Badjr and 30% owner of Badjr. DeKay has been an officer of Badjr
12 at all times relevant to this Order. DeKay was present at the
13 Banana Site during July 2001. DeKay has at times relevant to
14 this Order exercised control over the management decisions of
15 Badjr, including but not limited to decisions regarding hazardous
16 waste management at the Calabash Site and at the Banana Site.
17

18 1.3.4. As an officer and director of Badjr with hands
19 on control and decision making authority, DeKay had a
20 non-delegable duty to ensure that Badjr complied with the HWCL
21 and the regulations. DeKay further authorized, directed and/or
22 participated in each and every violation of the HWCL and the
23 regulations committed by Badjr and cited herein.
24

25 1.3.5. DeKay is a "person" as defined in Health and
26 Safety Code section 25118. DeKay is an "owner" and/or "operator"
27 of a hazardous waste transporter, as those terms are defined in
California Code of Regulations, title 22, section 66260.10.



1
2 1.4. Jurisdiction. Section 25187 of the Health and
3 Safety Code authorizes the Department to order action necessary
4 to correct violations and assess a penalty when the Department
5 determines that any person has violated specified provisions of
6 the Health and Safety Code or any permit, rule, regulation,
7 standard, or requirement issued or adopted pursuant thereto.
8

9 1.5. Exhibits. All exhibits attached to this Order
10 are incorporated herein by this reference.

11 1.6. Applicable Statutes and Regulations. Copies of
12 the statutes and regulations applicable to this Order are
13 attached as Exhibit (1).

14 DETERMINATION OF VIOLATIONS

15 2. The Department has determined:

16
17 2.1. The Respondents violated Health and Safety Code
18 section 25189 (a) in that on or about June 19, 2001, Respondents
19 intentionally or negligently made false statements on Uniform
20 Hazardous Waste Manifests (manifests) filed, maintained or used
21 for purposes of compliance with the HWCL, in that: The
22 Respondents replaced the original manifests under which eight
23 shipments were made with manifests on which the following false
24 statements were made:

25
26 2.1.1. The dates on which the waste were shipped from
27 the generator were altered to make it appear that the wastes had
been in transit, and therefore in storage, for a shorter time.



1
2 2.1.2. Transporters were listed on the false manifests as
3 transporters of the waste, although those transporters had not
4 taken custody of the waste and did not transport the waste.

5 2.2. The Respondents violated Health and Safety Code
6 section 25189 (a) in that on or about July 23, 2001, Respondents
7 intentionally or negligently made false statements on Uniform
8 Hazardous Waste Manifests (manifests) filed, maintained or used
9 for purposes of compliance with the HWCL, in that: The
10 Respondents signed five manifests indicating that Respondents
11 transported the hazardous wastes listed on those manifests from
12 the Denova Environmental, Inc., facility (Denova) to the Banana
13 Yard, when, in fact, at all times relevant to this order, the
14 wastes were stored at the Banana yard or at 14165 Slover Avenue,
15 Fontana, California.
16
17

18 2.3. The Respondents violated Health and Safety Code section
19 25201(a) in that Respondents stored hazardous waste at transfer
20 facilities at the Calabash Site and at the Banana Site, and on
21 adjacent properties, for longer than 10 days without
22 authorization from the Department.
23

24 2.3.1. Respondents stored at least one shipment of waste,
25 containing approximately 80 55-gallon drums, from a generator in
26 Lake Charles, Louisiana, at the Calabash Site from about June 17,
27 2001, until about June 30, 2001 (13 days); and at the Banana Site
from about June 30, 2001, until it was quarantined by the
Department on July 13, 2001 (13 days).



1 2.3.2. Respondents received and stored at the Calabash Site
2 until June 30, 2001, the following wastes shipped from American
3 Recovery, Inc.: one shipment received on or about
4 May 29, 2001 (about 32 days); one shipment received on or about
5 May 30, 2001 (about 31 days); one shipment received on or about
6 May 31, 2001 (about 30 days); and one shipment received on or
7 about June 4, 2001 (about 26 days). Each of these shipments
8 contained about 80 55-gallon drums.
9

10 2.3.3. Respondents received and stored at a site adjacent
11 to the Banana Site, at 14165 Slover Avenue, Fontana, California,
12 three of the four shipments of the hazardous wastes listed in
13 2.3.2. from July 6, 2001 until July 26, 2001 (about 20 days).
14

15 2.3.4. Respondents stored the remaining shipment of the
16 four shipments of the hazardous wastes listed in 2.3.2. at the
17 14165 Slover Avenue location from July 6, 2001, until or or about
18 July 23, 2001 (about 17 days).
19

20 2.3.5. Between about May 1, 2001, and August 1, 2001,
21 Respondents stored at least 14 shipments of hazardous waste
22 longer than ten days. These 14 manifests for shipments
23 transported by the Respondents show that the waste was held
24 longer than 13 days, where there was no evidence that the waste
25 was transported over a long distance or transported by a second
26 transporter.
27



2.3.6. Between May 4, 2001, and July 13, 2001, Respondent stored the waste listed on the following manifests longer than ten days at the Calabash and/or the Banana Sites:

Manifest number	Contents	Days at Calabash Site	Days at Banana Site
20823758	330 gal. oil and water	2 days	13 days
20823760	1800 lbs grinding sludge	55 days	14 days
20823823	2000 lbs grinding sludge	22 days	14 days
20823824	55 gal. Mineral spirits and water	13 days	13 days
20823833	1800 lbs grinding sludge	14 days	14 days

2.3.6. Between June 29, 2001, and July 13, 2001, Respondents stored an empty electrical transformer carcass and some drums of PCB contaminated oil longer than ten days at the Banana Site.

2.4. The Respondents violated Health and Safety Code section 25163(a)) in that from on or about April 30, 2001, through June 30, 2001, Respondents transported hazardous waste without a valid hazardous waste transporter registration issued by the Department.

2.5. Respondents violated Health and Safety Code section 25189(a) in that Respondents falsely stated on at least 122 manifests, that Respondents were Sina Environmental, Inc., a



1 registered hazardous waste transporter. Respondents are not
2 employed by, or any part of, Sina Environmental, Inc.

3 SCHEDULE FOR COMPLIANCE

4 3. Based on the foregoing Determination Of Violations,
5 IT IS HEREBY ORDERED THAT:
6

7 3.1.1. Immediately upon the effective date of this
8 Order, Respondents shall completely and accurately complete the
9 information required on manifests.

10 3.1.2. Immediately upon the effective date of this
11 Order, Respondents shall not transport hazardous waste within the
12 State of California unless Respondents have obtained and hold a
13 valid hazardous waste haulers registration from the Department.
14

15 3.1.3. Immediately upon the effective date of this
16 Order, Respondents shall not hold hazardous waste longer than
17 allowed by California Code of Regulations, title 22, section
18 66263.18 without authorization from the Department.

19 3.2. Submittals. All submittals from a Respondents
20 pursuant to this Order shall be sent simultaneously to:

21 Kit Davis, Branch Chief
22 Task Force Support and Special Investigations Branch
23 Department of Toxic Substances Control
24 8800 Cal Center Drive
Sacramento, California 95826-3200

25 and

26 Phillip Blum, P.E., Unit Chief
27 Task Force Support and Special Investigations Branch
1011 North Grandview Avenue
Glendale, California 91201



1
2 3.3. Communications. All approvals and decisions of
3 the Department made regarding submittals and notifications will
4 be communicated to Respondents in writing by the Branch Chief,
5 Department of Toxic Substances Control, or his/her designee. No
6 informal advice, guidance, suggestions, or comments by the
7 Department regarding reports, plans, specifications, schedules,
8 or any other writings by Respondents shall be construed to
9 relieve Respondents of the obligation to obtain such formal
10 approvals as may be required.
11

12 3.4. Department Review and Approval. If the
13 Department determines that any report, plan, schedule, or other
14 document submitted for approval pursuant to this Order fails to
15 comply with the Order or fails to protect public health or safety
16 or the environment, the Department may:
17

18 a. Modify the document as deemed necessary and approve
19 the document as modified, or
20

21 b. Return the document to Respondents with recommended
22 changes and a date by which Respondents must submit to the
23 Department a revised document incorporating the recommended
24 changes.

25 3.5. Compliance with Applicable Laws: Respondents
26 shall carry out this Order in compliance with all local, State,
27 and federal requirements, including but not limited to
requirements to obtain permits and to assure worker safety.



1 3.6. Endangerment during Implementation: In the event
2 that the Department determines that any circumstances or activity
3 (whether or not pursued in compliance with this Order) are
4 creating an imminent or substantial endangerment to the health or
5 welfare of people on the site or in the surrounding area or to
6 the environment, the Department may order Respondents to stop
7 further implementation of this Order for such period of time as
8 needed to abate the endangerment. Any deadline in this Order
9 directly affected by a Stop Work Order under this section shall
10 be extended for the term of the Stop Work Order.
11

12 3.7. Liability: Nothing in this Order shall
13 constitute or be construed as a satisfaction or release from
14 liability for any conditions or claims arising as a result of
15 past, current, or future operations of Respondents.
16 Notwithstanding compliance with the terms of this Order,
17 Respondents may be required to take further actions as are
18 necessary to protect public health or welfare or the environment.
19

20 3.8. Site Access: Access to the site shall be
21 provided at all reasonable times to employees, contractors, and
22 consultants of the Department, and any agency having
23 jurisdiction. Nothing in this Order is intended to limit in any
24 way the right of entry or inspection that any agency may
25 otherwise have by operation of any law. The Department and its
26 authorized representatives shall have the authority to enter and
27 move freely about all property at the Site at all reasonable



1 times for purposes including but not limited to: inspecting
2 records, operating logs, and contracts relating to the Site;
3 reviewing the progress of Respondents in carrying out the terms
4 of this Order; and conducting such tests as the Department may
5 deem necessary. Respondents shall permit such persons to inspect
6 and copy all records, documents, and other writings, including
7 all sampling and monitoring data, in any way pertaining to work
8 undertaken pursuant to this Order.
9

10 3.9. Data and Document Availability. Respondents
11 shall permit the Department and its authorized representatives to
12 inspect and copy all sampling, testing, monitoring, and other
13 data generated by Respondents or on Respondents's behalf in any
14 way pertaining to work undertaken pursuant to this Order.
15 Respondents shall allow the Department and its authorized
16 representatives to take duplicates of any samples collected by
17 Respondents pursuant to this Order. Respondents shall maintain a
18 central depository of the data, reports, and other documents
19 prepared pursuant to this Order. All such data, reports, and
20 other documents shall be preserved by Respondents for a minimum
21 of six years after the conclusion of all activities under this
22 Order. If the Department requests that some or all of these
23 documents be preserved for a longer period of time, Respondents
24 shall either comply with that request, deliver the documents to
25 the Department, or permit the Department to copy the documents
26 prior to destruction. Respondents shall notify the Department in
27



1
2 writing at least six months prior to destroying any documents
3 prepared pursuant to this Order.

4 3.10. Government Liabilities: The State of California
5 shall not be liable for injuries or damages to persons or
6 property resulting from acts or omissions by Respondents or
7 related parties in carrying out activities pursuant to this
8 Order, nor shall the State of California be held as a party to
9 any contract entered into by Respondents or its agents in
10 carrying out activities pursuant to the Order.
11

12 3.11. Incorporation of Plans and Reports. All plans,
13 schedules, and reports that require Department approval and are
14 submitted by Respondents pursuant to this Order are incorporated
15 in this Order upon approval by the Department.
16

17 3.12. Extension Request: If Respondents is unable to
18 perform any activity or submit any document within the time
19 required under this Order, the Respondents may, prior to
20 expiration of the time, request an extension of time in writing.
21 The extension request shall include a justification for the
22 delay.
23

24 3.13. Extension Approvals: If the Department
25 determines that good cause exists for an extension, it will grant
26 the request and specify in writing a new compliance schedule.
27



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

2
3
4
5

6
7
8
9
10
11

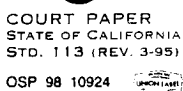
13
14
15
16
17

18
19

20

21

22
23
24
25
26
27



1 the Respondents and Docket Number, as shown in the heading of
2 this case. Respondents shall deliver the penalty payment to:

3 Department of Toxic Substances Control
4 Accounting Office
5 1001 I Street, 23rd floor
6 P. O. Box 806
7 Sacramento, California 95812-0806

8 A photocopy of the check shall be sent to:

9 Kit Davis, Branch Chief
10 Task Force Support and Special Investigations Branch
11 Department of Toxic Substances Control
12 8800 Cal Center Drive
13 Sacramento, California 95826-3200

14 RIGHT TO A HEARING

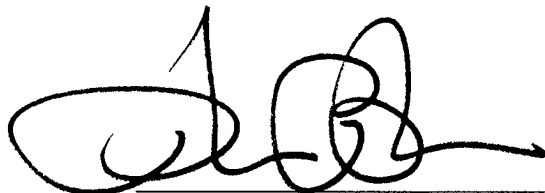
15 6. Respondents may request a hearing to challenge the
16 Order. Appeal procedures are described in the attached Statement
17 to Respondents.

18 EFFECTIVE DATE

19 7. This Order is final and effective twenty days from
20 the date of mailing, which is the date of the cover letter
21 transmitting the Order to Respondents, unless Respondents
22 requests a hearing within the twenty-day period.
23
24
25
26
27



1 Date of Issuance March 18, 2002.

2
3
4
5
6
7  3/18/02

8 Phillip Blum, P.E., Unit Chief
9 Task Force Special Investigation
10 Department of Toxic Substances
11 Control
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

